

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B05

PLR-124120-08

Date:

September 23, 2008

### Legend

Taxpayer =

Manager =

Date1 =

Date2 =

Date3 =

Date4 =

Date5 =

Exchange =

a =

Year1 =

Year2 =

Dear :

This ruling responds to a letter dated May 20, 2008, submitted by your authorized representative, requesting rulings under sections 301 and 305 of the Internal Revenue

Code (the "Code"). Additional information was submitted in subsequent correspondence.

The rulings contained in this letter are based upon facts and representations that were submitted on behalf of the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

#### SUMMARY OF FACTS

Taxpayer is an accrual basis corporation incorporated on Date1. Taxpayer files its federal income tax returns as a Real Estate Investment Trust ("REIT") on a calendar year basis. Taxpayer represents that it qualifies as a REIT under the Code, that it intends to maintain such qualification as a REIT, and that it regularly distributes its earnings and profits as required under § 857(a)(1). Taxpayer is managed and advised by Manager. Taxpayer has one class of common stock outstanding (the "Common Stock"), which is publicly traded and listed on the Exchange. There are approximately a shares of Common Stock outstanding.

Taxpayer intends (subject to the approval of its Board of Directors) to pay two special dividends ("Special Dividends") with respect to its Common Stock. The first Special Dividend will be declared in Date2 and paid in Date3. The second Special Dividend will be declared in Date4 and will be paid in Date5.

The amount of the Special Dividends has not yet been determined but it is intended to be sufficient, when added to earlier dividends, to meet Taxpayer's distribution requirements under § 857(a)(1).

Taxpayer expects to make the Special Dividends payable in the form of cash (the "Cash Option") or Common Stock (the "Common Stock Option") of equivalent value (determined as the average closing price over the three business day period following the election deadline). It is expected that a shareholder will have to choose the Cash Option or the Common Stock Option but not a combination of the two options. While each shareholder will have the option to elect to receive cash in lieu of stock for all of its entitlement under the Special Dividends, it is anticipated that the total amount of cash that may be paid in each of the Special Dividends will be limited to approximately 20 percent or more of the total value of such Special Dividend. In no event will the total amount of cash available for distribution be less than 20 percent of the total value of each of the Special Dividends.

If a stockholder fails to make a valid election by the election deadline, that stockholder will be deemed to have made an election to be determined by Taxpayer at Taxpayer's sole discretion. To the extent necessary, Taxpayer will pay cash in lieu of

fractional shares of Common Stock. Any cash paid in lieu of fractional shares will not count towards the 20 percent cash limit. Any shares of Common Stock paid in the Special Dividends will be subject to the same limitations on share ownership as apply to other shares of Common Stock currently outstanding that are imposed by Taxpayer's charter (the "Excess Share Clause"). To the best of Taxpayer's knowledge, Taxpayer does not anticipate that any stockholder's receipt of the Special Dividends will be affected by the Excess Share Clause.

If the Cash Option is exercised with respect to a number of shares of Common Stock such that the 20 percent cash limit would be exceeded, then stockholders electing the Cash Option will receive a pro rata amount of cash, but in no case less than 20 percent of their entitlement under each Special Dividend. After cash equal to the cash limit is distributed, any remaining unpaid balance of the Special Dividends will be paid in shares of Common Stock.

If the Cash Option is exercised with respect to a number of shares of Common Stock which would result in the payment of cash in an aggregate amount that is less than or equal to the Cash Limit, then all holders of shares with respect to which the Cash Option has been exercised will receive that Special Dividend in cash.

Taxpayer will treat the entire amount of cash and stock distributed in each of the two Special Dividends as a taxable dividend, and Taxpayer will comply with all applicable reporting and withholding requirements in regard thereto.

Neither of the two Special Dividends is part of any other transaction, and, at the time each of the two Special Dividends is consummated, Taxpayer will have no plan or intention of undertaking a corporate reorganization, a corporate separation, or any other transaction not in the ordinary course of business.

### RULINGS

Based solely on the information submitted and the representations set forth above, we rule as follows:

(1) Any and all of the cash and stock distributed in the Special Dividends (as described above) by Taxpayer will be treated as a distribution of property with respect to Taxpayer's stock to which § 301 applies. Sections 301 and 305(b).

(2) The amount of the distribution of the stock received by any shareholder electing to receive stock will be considered to equal the amount of the money which could have been received instead. Section 1.305-1(b)(2) of the Income Tax Regulations.

### CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Moreover, no opinion is expressed about the tax treatment of the transactions [or of any other matter] under other provisions of the Code or regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the transactions not specifically covered by the above rulings. In particular, no opinion is expressed with regard to whether Taxpayer qualifies as a REIT under subchapter M of the Code. Furthermore, no opinion is expressed with regard to whether the Special Dividends constitute Preferential Dividends under § 562(c) of the Code.

#### PROCEDURAL STATEMENTS

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that this private letter ruling may not be used or cited as precedent. A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number [PLR-124120-08] of this letter ruling.

Pursuant to the power of attorney on file in this office, a copy of this ruling letter will be sent to your authorized representative.

Sincerely,

*Virginia S. Voorhees*

Virginia S. Voorhees  
Senior Technician Reviewer, Branch 5  
Office of Associate Chief Counsel  
(Corporate)